

**MELODIE D. ADAMS**  
Claimant

**J. C. PENNEY COMPANY**  
Respondent

**LIBERTY MUTUAL INSURANCE COMPANY**  
Insurance Carrier

The Appeals Board finds the issues dealing with claimant's entitlement to medical treatment and temporary total disability compensation are not issues which can be brought before the Appeals Board as a result of an appeal from a Preliminary Hearing Order. K.S.A. 44-534a, as amended, and K.S.A. 44-551, as amended, limit the right of the parties to appeal from preliminary hearings to jurisdictional issues dealing with whether the employee suffered an accidental injury, whether the injury arose out of and in the course of the employee's

employment, whether notice is given or claim timely made, or whether certain defenses apply. Appeals can further be taken if it is alleged the Administrative Law Judge exceeded his or her jurisdiction in granting or denying the relief requested. K.S.A. 44-534a, as amended, specifically grants administrative law judges the authority to render decisions regarding a claimant's entitlement to temporary total disability compensation and medical treatment.

The issue dealing with whether claimant suffered accidental injury arising out of and in the course of employment can be considered by the Appeals Board on appeal from a preliminary hearing.

Claimant alleges accidental injury beginning May 24, 1997, through May 30, 1997. Claimant was working as a hair dresser for J. C. Penney, a job she had held for approximately two-and-a-half years. Claimant alleged a slow onset of pain in her upper extremities, neck, and shoulders resulting from her job duties as a hair stylist. Respondent contends that claimant was exaggerating her symptoms and presents the testimony of Cheryl Staats, the loss prevention manager for J. C. Penney, who observed claimant on several occasions performing physical motions which claimant had earlier alleged she could not perform. Respondent further contends the medical evidence indicates that claimant was exaggerating her symptoms during the medical examinations by the various doctors. Certain medical reports of Dr. Rosalie R. Focken, indicated claimant would exhibit limited range of motion during the examinations, but when claimant was distracted, her range of motion would improve. In her office report of July 7, 1997, Dr. Focken went so far as to question the reality of claimant's pain complaints.

The Administrative Law Judge had the opportunity to observe the testimony of both claimant and Ms. Staats, and is in the enviable position of being able to assess the credibility of the witnesses in this matter. The Appeals Board gives some deference to this fact and finds that the decision by the Administrative Law Judge that claimant did not prove accidental injury arising out of and in the course of her employment is supported by the credible evidence, should be affirmed.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Jon L. Frobish dated July 30, 1997, should be, and is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of October 1997.

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BOARD MEMBER

c: James B. Zongker, Wichita, KS  
Michael D. Streit, Wichita, KS  
Jon L. Frobish, Administrative Law Judge  
Philip S. Harness, Director